

**In the Supreme Court**  
**Appeal from the Court of Appeals**  
**Presiding Judge Michael J. Talbot**

Dawn Marie Miller

Plaintiff-Appellant

and

Department of Community Health

Intervening Plaintiff

v.

Progressive Corporation, Progressive Casualty Insurance  
Company, Progressive Classic Insurance Company,  
and Progressive Michigan Insurance Company

Defendants

And

Citizens Insurance Company of America

Defendant-Appellee

Supreme Court No: 131987

Court of Appeals Case No.: 259504

Washtenaw County Circuit Court  
Case No.: 02-284-NF

131987

BRIEF OF DEFENDANT-APPELLEE CITIZENS INSURANCE COMPANY OF  
AMERICA

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**II. STATEMENT OF QUESTION PRESENTED**

Is the Plaintiff “named in the policy” within the meaning of MCL 500.3114(1) where the policy states “The Declarations, endorsements and application are hereby incorporated into and made a party of this policy” but the Declarations sheet effective February 2, 2001, which lists the plaintiff as an occasional driver, is preceded by a clause stating “Your Policy Premium Is Based On The Following Information Which Is Not Part Of The Policy”.

### **III. STATEMENT OF FACTS**

#### **A. Plaintiff's Allegations**

On March 8, 2001, Dawn Miller sustained injuries in an automobile accident while riding as a passenger in a vehicle owned and operated by her fiancé, Richard O'Palko, Jr. No other vehicles were involved in the collision. Mr. O'Palko had insured his vehicle under a policy issued by an entity of the Progressive Insurance Company. The accident occurred while Dawn Miller and her fiancée were traveling to Michigan to visit Ms. Miller's parents. Eighteen months prior to this accident, Dawn Miller moved to Maryland to live with her fiancé. The sworn testimony provided by the appellant confirmed that she intended to live in Maryland permanently, she obtained employment in Maryland and she planned to marry and raise a family in that state. (*Dawn Miller Transcript, 6a-21a*)

Citizens issued a policy in Michigan covering a 1992 Chevrolet Corsica that identified Dawn Miller's parents, Steven and Sallie Miller, as Named Insureds on the two page declaration and endorsement issued at the time of renewal. More specifically, the first page of the declaration and endorsement contained the term "Named Insured" in bold print followed by the names "Miller Steven J & Sallie A". (*Declaration and Endorsement, 53a*). Dawn Miller is not identified as a "Named Insured" at any place in the policy or the declaration and endorsement. At the bottom of the last page of the declaration and endorsement is the following section separated by bold lines:

---

**Your Policy Premium Is Based On The Following Information Which Is Not Part Of The Policy**

92 CHEV CORSICA

<b>Drivers:</b>	<b>License Number</b>		
STEVEN J. MILLER	M460777429906	Principal	457211
SALLIE A. MILLER	M460758067435	Occasional	050160
DAWN MILLER	M460135585482	Occasional	184260

(FPO20 The assigned driver is female, 19 or 20 years old and is not the owner or principal operator 00 of the auto and qualify for "preferred".

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*(Declaration and Endorsement, 54a)*

The appellant is attempting to persuade the court that this excluded section should be considered a part of the policy and an "occasional driver" should be considered a person named in the policy within the meaning of the MCL 500.3114(1).

**B. Rulings By The Trial Court And Court Of Appeals**

The trial court rejected appellant's argument by concluding that she did not qualify as a named insured and did not qualify for benefits and stated as follows:

"The renewal of that declaration and endorsement states, again, "your policy premium is based on the following information which is not part of the policy". Thus, that portion of the endorsement that identifies Dawn Miller as an occasional driver is, by its own clear language, excluded from the policy itself. The policy itself only identifies Steven and Sally Miller as named insured. As plaintiff Dawn Miller was neither a named insured at the time of the accident nor was she a resident of the Miller's home at the time of the accident, under the terms of the policy she is excluded from coverage for both no-fault benefits and under insured motorist

benefits pursuant to the reasoning found in Transamerica v Hastings Mutual, as well as Dairyland Insurance Company v Auto-Owners Insurance Company, 123 Mich App 674, at pages 685 through 686 where—a 1983 decision, where the woman endorsed as a driver on the policy issued to the mother but not living in the mother’s home is not a person named in the mother’s policy.” (*Trial Court Decision, 77a, 78a*).

The Court of Appeals affirmed the dismissal of appellant’s case concluding, “Plaintiff argues that she is entitled to PIP benefits under either the terms of her parents’ no fault policy as a “named insured” or under MCL 500.3114(1) because she was “the person named in the policy”. We disagree. This Court has repeatedly held that the phrase “the person named in the policy” under MCL 500.3114(1) is synonymous with the term “named insured”. (Exhibit 5). Furthermore, it held “Plaintiff also argues that she was “the person named on the policy” under MCL 500.3114(1) because she was listed as an occasional driver, and the policy provided that “the declarations, endorsements and application are hereby incorporated and made a part of this policy.” However, the document adding plaintiff as an occasional driver could not have been part of the policy for determining whether she was “the person named in the policy” because that document provided in bold print that ‘Your Policy Is Based On The Following Which Is Not Part Of The Policy.’” (*Court of Appeals Decision, 82a, 83a*)

On May 25, 2007 this Court directed the parties to submit supplemental briefs addressing whether the plaintiff is “named in the policy” within the meaning of MCL 500.3114(1) where the policy states, “The Declarations, endorsements and application are hereby incorporated into and made a part of the policy” but the Declarations sheet effective February 2, 2001, which lists the plaintiff as an occasional driver, is preceded by the clause stating, “Your Policy Premium Is Based On The Following Information Which Is Not Part Of The Policy.”

#### **IV ARGUMENT**

##### **A. The Trial Court and Appellate Court Correctly Concluded That The Reference To Dawn Miller As An “Occasional Driver” Is Not A Part Of The Policy**

It is significant to note that the exclusionary language preceding the reference to occasional driver is separated from the rest of the policy by three characteristics; one, its position at the end of the declaration and endorsement, two, its location between two bold lines and three, its composition of bold print. It is also important to note that the inclusion of exclusions in insurance policies is well supported by precedent. In fact, this Court explained in Auto-Owners Ins Co v Churchman, 440 Mich 560, 566, 489 N.W.2d 431 (1992), “coverage under a policy is lost if any exclusion within the policy applies to an insured's particular claims...Clear and specific exclusions must be given effect. It is impossible to hold an insurance company liable for a risk it did not assume.” citing Kaczmarck v La Perriere, 337 Mich 500, 506; 60 NW2d 327 (1953). Appellant’s assertion that an insurance company should not be permitted to include exclusions is as nonsensical as the assertion that an individual reading this insurance policy could not determine that a provision separated by bold lines and identified as not part of the policy in bold print is not part of the policy.

Furthermore, appellant’s assertion that a contradiction exists between the body of the policy and the declaration is an insufficient assertion to provide the relief requested because in the event of a conflict between the endorsement and the policy the language of the endorsement prevails. In Peterson v Zurich Insurance Company, 57 Mich App 385; 225 N.W.2d 776 (1975) the appellate court rejected an argument similar to that presented in this case as follows: “...it

would appear that if the policy provision of the standard policy relied upon by plaintiff is to control, then it must likewise be held that it so modifies or vitiates the rider or endorsement as to make the latter a useless scrap of paper. The two provisions cannot be harmonized in such a way to give effect to both. One or the other must fail.”

The court Peterson court ruled the endorsement prevailed and supported its decision by discussing the holding of Jackson v British America Assurance Co, 106 Mich App 47; 63 N.W. 899 (1895), in which this Court stated, “We will first consider the effect of the riders, in and of themselves. It is elementary that all parts of the policy are to be harmonized and given effect, if it can be consistently done, and that, unless the riders are irreconcilable with the printed clause quoted, such clause must stand. **If they are inconsistent and irreconcilable, the riders must control.**”

This holding that grants priority to the language contained in riders and endorsements over the standard policy is supported by several subsequent decisions including Smart v New Hampshire Ins. Co, 428 Mich 236, 407 N.W.2d 362 (1987), Hawkeye-Security Ins. Co. v Vector Constr. Co., 185 Mich App 369, 460 N.W.2d 329 (1990), Morbark Industries, Inc. v Western Employers Ins. Co., 170 Mich App 603, 429 N.W. 213 (1988), Jones v Philip Atkins Constr. Co., 143 Mich App 150, 371 N.W.2d 508 (1985) and Tiano v Aetna Casualty & Surety Co, 102 Mich App 177, 301 N.W. 2d 476 (1980). Thus, even if one believes a contradiction between the declaration and endorsement and the standard policy in this case exists, the exclusionary language in the declaration and endorsement that separates the appellant from the policy would control.

**B. The Common Law Decisions Interpreting MCL 500.3114 Correctly Focused  
On Persons Named As Insured Individuals**

Counsel for appellant suggests twenty years of precedent addressing this section of the No Fault statute must be reexamined in favor of an interpretation described by appellant as literal. Unfortunately, the argument presented by appellant contains a reference to the No Fault statute that does not represent the very words of the original statute. More specifically, appellant's application states, "the rather simple question presented by the statutory language is whether Dawn Miller was a 'person named in the policy'". However, the statute does not provide benefits to a person named in the policy. Rather, as represented by a more complete quote from the statute, a No Fault policy applies to "the person named in the policy". MCL 500.3114 (1).

One of the cases upon which appellant relies, Robinson v City of Detroit, 462 Mich 439, 459; 613 N.W.2d 307 (2000), discussed the significant difference between the modifiers "a" and "the" as follows, "Traditionally in our law, to say nothing of our classrooms, we have recognized the difference between "the" and "a". "The" is defined as "definite article. 1. (used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article a or an)...." The court went on to conclude, "recognizing that "the" is a definite article, and "cause" is a singular noun, it is clear that the phrase "the proximate cause" contemplates one cause." Id. At 461, 462. Thus, the argument that the legislature intended for No Fault policies to apply to all people referenced in the policy conflicts with the literal interpretation urged by appellant. The legislature chose the more restrictive modifier and decisions applying policies only to named insured individuals instead of anyone on the policy are consistent with that selection.

**C. The Trial Court And Appellate Court Correctly Concluded That The Plaintiff Appellant Does Not Qualify As An Insured Pursuant To The Terms Of The Policy**

It is essential to read a policy in order to determine who the policy names as the insured

individual. In this case, in addition to using that specific designation, the policy contains the following definitions:

“Insured” is defined as:

You or any “family member” injured in an “auto accident”.

The word “you” is defined as:

1. The “named insured” shown in the Declarations; and
2. The spouse if a resident of the same household.

Dawn Miller does not qualify as “you” pursuant to the terms of the policy because she is not listed as a “named insured” nor is she a spouse of either of her parents. The only other definition that qualifies an individual as an insured under the policy is “family member” and that term is defined as:

A person related...by blood, marriage or adoption who is a resident of your household.

*(Citizens Policy, 87a, 93a).*

The following testimony of appellant confirms she did not reside in the household of her parents at the time of the accident:

1. On March 8, 2001, her residential address was 5345 Long Beach Drive, Saint Leonard, Maryland. *(Dawn Miller Transcript, 6a).*
2. Ms. Miller had lived in Saint Leonard, Maryland for a “year and a half” prior to her accident. *(Dawn Miller Transcript, 7a).*
3. She lived with her fiancé and his mother and stepfather. *(Dawn Miller Transcript, 7a).*
4. When she moved to Maryland, she intended to start a life with her fiancé and get married. *(Dawn Miller Transcript, 9a).*
5. She planned to stay in Maryland. *(Dawn Miller Transcript, 9a).*
6. She lived in Maryland from July of 1999 until March 8, 2001 *(Dawn Miller Transcript,*

11a).

7. She obtained a Maryland driver's license. (*Dawn Miller Transcript, 12a*).
8. She obtained employment in Maryland. (*Dawn Miller Transcript, 12a*).
9. She never had any gaps in her employment where she left Maryland and worked elsewhere. (*Dawn Miller Transcript, 15a*).
10. She used the Maryland address on her 1999 and 2000 tax returns. (*Dawn Miller Transcript, 18a*).
11. She had credit cards with Capital One and Kohl's, both used her Maryland address. (*Dawn Miller Transcript, 19a*).
12. She had a library card in Maryland. (*Dawn Miller Transcript, 20a*).
13. Her fiancé had no plans to move. (*Dawn Miller Transcript, 21a*).
14. As far as the life she planned with her fiancé, she planned to live in Maryland, raise a family in Maryland, and stay in Maryland. (*Dawn Miller Transcript, 21a*).

Consequently, Dawn Miller does not qualify as an insured pursuant to the terms of the policy because she is not identified as a "named insured", she is not a spouse of a "named insured" and she did not reside with her parents at the time of the accident. The simple solution to avoiding conflicts such as the one at issue in this lawsuit is to enforce the obligation of individuals to read insurance policies, Mate vs Wolverine Mutual, 233 Mich App 14 (1998), instead of the onerous proposals from appellant's counsel that involve revising the No Fault statute or rewriting a significant percentage of the insurance policies issued in this state to eliminate reference to occasional drivers.

**D. The Trial Court And Appellate Court Correctly Followed The Common Law Decisions Holding That In Order To Be A "Person Named In The Policy" Within Meaning Of The No Fault Act One Must Be A Named Insured On The**

## Policy

The appellant would not qualify for benefits under the No Fault statute even if the section of the declaration and endorsement that identified her as an “occasional driver” had not been excluded from the policy because the No Fault act does not extend coverage to such individuals. The Michigan No Fault Act delineates the requirements than an injured person must satisfy in order to recover personal injury protection benefits:

Except as provided in subsection (2) (3) and (5) a personal protection insurance policy described in section 3101(1) applies to accidental bodily injury to the person named in the policy, the person’s spouse, and a relative of either domiciled in the same household, if the injury arises from a motor vehicle accident. MCLA 500.3114(1).

It is well settled in Michigan law that the term “person named in the policy” contained in the No Fault Act and the term “named insured” are synonymous.

The appellate court first reviewed MCL 500.3114 almost twenty two years ago in Citizens Mutual Insurance Company v Community Services Insurance, 65 Mich App 731 (1975) and, significantly, used the phrase “named insured” interchangeably with “person named in the policy.” This decision involved potential coverage for the estranged wife of the named insured. In framing the issue, the appellate court inquired, “Do personal protection insurance benefits of a Michigan no fault automobile insurance policy extend to the estranged wife of a named insured not domiciled in his household?” Significantly, the court used the phrase “named insured” when discussing the sentence of the statute that states, “ the person named in the policy, his spouse and any relative of either domiciled in the same household.” Thus, the reliance by Citizens Insurance Company of America in this case on the interchangeability of “person named in the policy” and “named insured” is supported by the interpretation of the No Fault act that courts, including this Court, have declined

to disturb for twenty years.

Tens years after first addressing this section of the No Fault act, the appellate court addressed the statute again in Dairyland Ins Co vs Auto-Owners Ins Co, 123 Mich App 674 (1983), which involved facts strikingly similar to those of the case at bar. Dairyland argued that the daughter of the named insured should be considered “a person named in the policy” because of a reference to her on the declaration sheet. In rejecting that argument the court opined, “The first step in plaintiff’s argument is based on the contention, however, that there is a distinction between “named insured” and “person named in the policy”. Plaintiff has cited no case law from this or any other jurisdiction in support of that contention. Our Court has used the term “named insured” interchangeably when referring to “the person named in the policy” under 3114.” Id. At 685.

The court concluded that the phrases should continue to be used interchangeably and it commented on the consistency with this position and the legislative intent: “We are not persuaded that there is a distinction between the phrase “the person named in the policy” and the phrase “the named insured”. We further believe it illogical to interpret a code designation, dealing with a risk classification, as the equivalent of naming an insured. Policy language must be construed according to its ordinary, plain meaning. Rowland vs Detroit Automobile Inter-Ins Exchange, 388 Mich 476; 201 NW2d 792 (1972). Under plaintiff’s interpretation, sons or daughters leaving their parents’ household to establish new domiciles would carry with them coverage from their parents policy and extend it to their spouse or other relatives in their new household. This interpretation requires a greatly strained construction of the statutory language and would substantially expand the insurer’s exposure without the insurer’s having any practical means of calculating the risk.” Dairyland, supra at 685-686.

Appellant would presumably refer to the scenario of a child leaving a parent’s home but

carrying No Fault coverage to a new home and new family members as a hypothetical evil of limitless liability. However, Ms. Miller's actions in this case have transformed these limitless liability scenarios from hypothetical to real. If the court adopts appellant's reasoning, Citizens would become obligated to insure a daughter who left her parent's household to establish new domicile in another state a year and one half before the accident. Consequently, when agreeing to insure individuals, Michigan insurance companies will be forced to evaluate the risks not only of named insureds but of all other individuals referenced in any of the policy documents. Such a development could cause the cost of purchasing insurance in this state to become prohibitive.

In Transamerica Ins vs Hastings Inc, 185 Mich App 249 (1990), lv app den, 437 Mich 1010 (1996) the court continued to follow the Dairyland rationale. Specifically, the court ruled that where the insurance carrier identified a young man on a policy as one of several drivers of a vehicle, but not as a named insured, he could not be considered a person named in the policy. The court stated that to hold otherwise would expand the insurer's exposure to a point beyond justifiable limits. The court summarized this point, which fits precisely into the present situation with Dawn Miller, as follows: "Under Transamerica's theory, Scott (the injured person) will be an insured under the Hastings Mutual policy wherever he goes and whatever he does. If Scott marries and leaves home to live with his spouse, he will continue to be insured because he is the "person named in the policy". In addition, Scott's spouse, their children, and any relative domiciled in the same household will be entitled to benefits under Hastings Mutual's policy...Under Transamerica's reading of "the person named in the policy" coverage has now been extended from one household-that of the named insureds-to three households and several more people-probably more people than could reasonably be expected to reside in the Curtiss household. Is this what Hastings Mutual, the Curtisses or the Legislature intended? It hardly seems likely." Transamerica Ins vs Hastings Ins, 185 Mich App 249,

254-255 (1990).

Not only did the Transamerica decision reinforce the interpretation of the phrase “person named in the policy” that had existed for fifteen years but the Michigan Supreme Court denied an application for leave to appeal that decision in 1991 concluding, “we are not persuaded that the question presented should be reviewed by the Court.” Transamerica Ins vs Hastings Ins, 437 Mich 1005 (1991). In Harwood v Auto-Owners Insurance Company, 211 Mich App 249 (1994), the court continued to follow the rationale of Dairyland and held, “merely listing a person as a designated driver on a no-fault policy does not make the person a named insured...To hold otherwise would expand defendant’s risk of exposure beyond justifiable limits.” The Michigan Supreme Court also denied leave to appeal this decision in 1996. Harwood v Auto-Owners Insurance Company, 451 Mich 874, 549 N.W.2d 565 (1996).

In Cvengros vs Farm Bureau, 216 Mich App 261 (1996), the court followed Transamerica, Dairyland, and Harwood and recognized that the mere listing of a person as a designated driver on a no-fault policy does not make the person a “named insured”. The policy language in Cvengros differed from the case at bar. More specifically, that policy defined a “named insured” more broadly by including “the individual named in the declarations”. Thus, the plaintiff’s girlfriend qualified as a “named insured”, even though that specific designation was not placed next to her name, because she was identified on the declaration sheet. The Citizens policy, however, is more specific and states that the only way to receive benefits through the “named insured” provision is to be specifically shown as a “named insured” in the declarations.

In 2002, the appellate courts released another decision following the interpretation of “person named in the policy” entitled Kief v Universal Underwriters Insurance Company, unpublished decision of the Michigan Court of Appeals, November 19, 2002, (Docket No. 236260)

in which the court reiterated, “the statutory term “the person named in the policy” means those persons that the policy specifically designates as the “named insured”. Cvengros v Farm Bureau Ins, 216 Mich App 261, 264-265; 548 N.W.2d 698 (1996). Thus, pursuant to statute and case law, PIP coverage is provided to those listed on the declaration page as “named insured”.”

Three years later another decision enforced the interpretation of section 3114. In the case of Auto-Owners Insurance Company v Farmers Insurance Exchange, unpublished opinion of the Michigan Court of Appeals, April 5, 2005, (Docket No. 248723), the court acknowledged, “For purposes of MCL 500.3114(1), the phrase “the person named in the policy” is synonymous with the term “named insured”” citing Cvengros v Farm Bureau Ins, 216 Mich App 261, 264-265; 548 N.W.2d 698 (1996).

Finally, on May 15, 2007 the appellate court issued its most recent affirmation of the interchangeability of “named insured” and “person named in the policy” in Dobbelaere v Auto-Owners, \_\_\_ Mich App \_\_\_; \_\_\_ N.W.2d \_\_\_ (2007). Seth Dobbelaere sustained injuries after being ejected from a vehicle owned by David Jones and being driven by his son, David Jones II. The vehicle involved in the accident was uninsured and Mr. Dobbelaere did not own a vehicle. Therefore, he sought No Fault benefits from an Auto-Owners policy issued to the mother of David Jones II based upon the fact that David Jones II was listed as an additional driver on this policy. Auto-Owners denied the claim and Mr. Dobbelaere began receiving benefits from the Auto Club after it had been appointed as his carrier through the Assigned Claims Facility.

The appellate court agreed that Auto-Owners held no responsibility for payment of No Fault benefits because the designation of additional driver did not convert either Jones gentleman into a named insured on the policy. In reaching its decision it stated the following: “...this Court has held that merely listing a person as a driver on a no-fault policy does not make the person a “named

insured” as that term is used in MCL 500.3114(1). See Transamerica Ins Corp of America v Hastings Mutual Ins Co, 185 Mich App 249, 254-255; 460 N.W.2d 291 (1985) (explaining that ‘to hold otherwise would expand the insurer’s exposure to a point beyond justifiable limits’). Because, to rely on these references would expand the coverage bargained for by the parties beyond that plainly evidenced by the unambiguous language of the policy and its no-fault endorsement, these references are similarly insufficient to support that these individuals were contractually intended to be insureds under the policy for purposes of no-fault benefit coverage.” Id. At footnote 3.

As noted above, the Declarations of the policy issued to Steven Miller identified the “named insured” as Steven Miller and Sallie Miller. Dawn Miller is listed only as an “occasional driver” in a section of the endorsement that is clearly excluded from the policy. The definitions in the Citizens policy and the cases referenced above make it clear that Dawn Miller was not a named insured and thus not a “person named in the policy” as that term has been defined. Consequently, she cannot satisfy the “named insured” requirements under the No Fault Act, the PIP provisions of the Citizens policy or underinsured provisions of the Citizens policy.

**E. The Trial Court And Appellate Court Correctly Followed The Doctrine Of Stare Decisis**

An abandonment of common law decisions that have governed the actions of insurance companies and insured individuals for twenty years would violate the integrity of the judicial process. Stare decisis is “the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.” Robinson v City of Detroit, 462 Mich 439, 613 N.W.2d 307 (2000).

This Court emphasized that when evaluating the abandonment of stare decisis courts must

consider the practical workability of the current law and whether reliance interests would work an undue hardship. The fact that cases identified by counsel for appellee span nearly a quarter of a century and the fact that this Court denied leave to appeal on two prior occasions establishes the fact that the rule of law being analyzed is practical and workable. The common law provides insurance carriers with identifiable limits to the risk insured and insured individuals need only to confirm that those individuals they want to insure are listed as “named insureds” by reading the policy.

Furthermore, an analysis of the consequences of eliminating the principles upon which insurance companies have relied for twenty years would work undue hardship for insurers and insured individuals. This Court framed the issues for a reliance analysis in Robinson v City of Detroit, 462 Mich 439, 466, 613 N.W.2d 307 (2000), “As to the reliance interest, the Court must ask whether the previous decision has become so embedded, so accepted, so fundamental, to everyone’s expectations that to change it would produce not just readjustments, but practical real-world dislocations.” This Court supported its decision with the following analysis of other cases, “What it is that singularizes these cases, even as with the United States Supreme Court’s legal tender cases after the Civil War, see Knox v Lee, 79 U.S. (12 Wall) 457; 20 L. Ed. 287 (1870), is that to overrule them, even if they were wrongfully decided, would produce chaos.”

Should the Court accept appellant’s suggested interpretation, Citizens would become obligated to pay lifetime medical benefits to an individual who left her parents’ home and established a new life in Maryland eighteen months before this accident. Furthermore, every insurance carrier in Michigan would become obligated to honor No Fault claims not only of those they intended to insure but also of individuals they did not intend to insure and in some cases individuals who were specifically excluded from the policy simply because the insurance carriers identified those individuals on a policy or declaration page. Such a conclusion would cause chaos

because that person is referenced in the policy.

**F. The Appellant's Proposed Application Of MCL 500.3114 Would Violate The Contracts Clause Of The Constitution**

Appellee requests the denial of the application for leave but if the Court should decide to grant leave it is requested that it also consider whether the statute, if interpreted as appellant suggests, would implicate the Contracts Clause of the federal or state constitution as Justice Markman considered when addressing MCL 500.3114(5) in Farmers Ins Exchange v. Farm Bureau Gen. Ins. Co., 2007 Mich. Lexis 1248 (June 1, 2007). In this case and others that would be governed by this decision the only rationale for imposing liability on an insurer would be a contract. Const 1963, art 1, section 10 states no "law impairing the obligations of contract shall be enacted." And US Const, art 1, section 10 states that no "State shall... pass any...Law impairing the Obligation of Contracts."

The adoption of appellant's position would extend liability to any individual listed in the policy as opposed to only the named insured individuals. Such an imposition of liability would diminish the value of the contract to the insurer by establishing a new financial obligation and enhance the value to those who would be insured by establishing a new source for No Fault benefits. This development is significant when considering "one of the tests that a contract has been impaired is, that is value has by legislation been diminished. It is not, by the Constitution, to be impaired at all" Bank of Minden v Clement, 256 U.S.126, 128, 41 S.Ct. 408; 65 L.Ed. 857 (1921). This violation of the Constitution must be considered should the Court grant this application for leave.

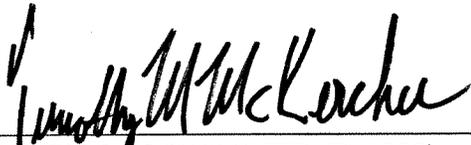
**V RELIEF REQUESTED**

The trial court and appellate court based their decisions on long standing precedent and the

facts of this case. Defendant/Appellee requests that this Court affirm the dismissal of the plaintiff's case with prejudice and/or deny this application for leave to appeal.

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Dated: July 4, 2007

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